

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Implementation of Section 621(a)(1) of the ) MB Docket No. 05-311  
Cable Communications Policy Act of 1984 )  
as amended by the Cable Television )  
Protection and Competition Act of 1992 )

COMMENTS OF THE CITY OF ONTARIO, CALIFORNIA

Introduction

The City of Ontario, California (Ontario or City) submits these comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking<sup>1</sup> (NPRM) relating to the current environment concerning competitive video programming—particularly with respect to the local franchising authority's process for awarding multiple franchises under Section 621(a)(1) of the Communications Act, as amended (Communications Act or Act).<sup>2</sup>

In a nutshell, Ontario (a) welcomes competition among all new entrants; (b) favors a streamlined, competitively-neutral, non-discriminatory process for granting non-exclusive licenses or franchises to all applicants seeking to enter our community via reliance on the public rights-of-way; and (c) has already taken steps aimed at achieving a technology-neutral, level

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<sup>1</sup> *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311, 20 FCC Rcd 18581, (rel. Nov. 18, 2005).

<sup>2</sup> 47 U.S.C. § 541(a)(1).

playing field for any applicant seeking a license or franchise to provide multichannel video programming.

Finally, given the unique local perspective and daily concerns inherent in managing the local public rights of way, Ontario generally supports the comments filed by the National League of Cities (NLC) and the National Association of Telecommunications Officers and Advisors (NATOA), and believes that the local franchise process should apply symmetrically and fairly to the facilities of all multichannel video programming distributors (MVPD), be they traditional cable operators or IP-enabled video providers, who rely on facilities located within the public rights of way. Thus, Ontario also generally supports the “video franchise principles” recently espoused by Senators Conrad Burns (R-Mont.) and Daniel Inouye (D-Hawaii), which, in essence, (a) reaffirm the unique role of states and local governments in the video franchising process; (b) favor swift competitive entry through streamlined and timely franchise procedures; and (c) promote competitive neutrality on a level playing field.<sup>3</sup>

A. Ontario’s Experience with Traditional Cable Franchising

Occupying nearly 50 square miles 35 miles east of Los Angeles, pro-business Ontario is known as the Gateway to Southern California, and enjoys a growing population of 172,000.<sup>4</sup> Ontario’s long experience with cable

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<sup>3</sup> Broadcasting & Cable, [www.broadcastingcable.com](http://www.broadcastingcable.com), February 2, 2006, by John Eggerton.

<sup>4</sup> For additional facts about Ontario, visit our website at <http://www.ci.ontario.ca.us/index.cfm/22>.

television franchise matters dates back to the granting of its first cable television franchise in September 1957—which occurred many years before other levels of government even considered the issues that would arise through the evolution of cable television systems. And, to be sure, Ontario has never denied a franchise to any party seeking to provide cable or other video programming services in our community.

At present, however, only a single franchise cable provider, Adelphia Communications of the Inland Empire, currently provides service to Ontario. Moreover, owing to the sole cable provider's filing of a Chapter 11 bankruptcy proceeding, Ontario recently approved a franchise transfer to Time Warner NY Cable LLC. This transfer will be effective upon the completion of the underlying Adelphia/Time Warner transaction, which will also count as the second transfer of the franchise during the past six years.

#### B. Ontario's Experience with Competitive Cable and Video Services

In the more recent past, Ontario has welcomed the prospect of new entrants to provide competitive video and data services. The City, for example, openly supported the efforts of alternative providers, such as Wide Open West, to provide alternative video and data services, but, where video is concerned, and despite our enthusiasm for competition, these efforts have been unavailing.

More significantly, local franchise requirements were not, in our view, a significant factor limiting competitive entry. Rather, the considerable

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expense of overbuilding the incumbent cable provider has been the greatest deterrent to competitive entry into our local cable television, or video programming, market. Indeed, until recent technological advances, overbuilding costs, coupled with the use of coaxial cable technology for the “last mile,” meant that an overbuilder would be entering a competitive market with a product that was not appreciably better than the existing product.

So, we are quite pleased that, at the very least, the prospect of intermodal competition between traditional cable providers and incumbent telephone companies seeking to provide IP-enabled video services over their existing networks may be finally underway, but we do not accept the arrival of a duopoly among competing Goliaths as the future-state model for competition in video programming. In Ontario, in particular, we enjoy expansive tracts of early-stage “greenfield” developments, and do not wish to perpetuate the legacy practice of former monopolists inhibiting competition by virtue of their inherent regulatory ability to tie up the last-mile networks to new homes and businesses.

Thus, to ensure a truly competitive environment on a going-forward basis in areas of greenfield construction, Ontario intends to deploy and operate its own fiber-to-the-home (FTTH) network, which will serve two essential purposes: (a) provide the municipality with an advanced, non-switched private line network for internal municipal purposes; and (b)

provide the community with an open-access physical transport network available to any applications provider on a competitively neutral wholesale basis.

That is, whether offering voice, data, or video services, the applications providers competing under such a paradigm may forego the cost of deploying an advanced high-speed physical transport network, and, at the same time, enjoy access to a truly level playing field. In the case of video programming, the competing applications providers would pay a competitively neutral port charge for transport to the customer's premises, freeing them to compete on the essential bases of brand, product mix, bundling, and price. Any carrier will remain free to overbuild Ontario's municipal network in these greenfield areas, but, in the event they opt to use the City's network, they will forego paying license or franchise fees with respect to such use, because, of course, they will not be burdening the public rights-of-way with additional facilities.

### C. Ontario's Response to the Arrival of Competitive MVPDs

As is the case with most municipalities, Ontario's past realities of dealing with a single cable television provider meant there was little need to define local processes and procedures for granting franchises to multiple cable television providers. With the arrival of IP-enabled video, and faced with the first real potential for attracting competitive video providers,<sup>5</sup> the City immediately recognized the need for

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<sup>5</sup> Aware several months ago that Verizon was taking steps to install a FTTH network in Ontario, City representatives contacted Verizon to initiate discussions that might lead to a

adopting a local ordinance that would ensure a fair and equitable application process for all video providers.

To achieve that end, Ontario prepared a draft ordinance to deal fairly and expeditiously with this welcome potential for competitive video services. In the main, the City's draft ordinance seeks to provide the same or comparable license or franchise terms and conditions to all providers of video services—without regard to technology. Moreover, we have shared this draft ordinance with both Verizon and Time-Warner representatives so as to (a) better understand how the two most likely intermodal competitors with an immediate business interest in our community will relate to this new environment, and (b) informally explain how Ontario proposes to achieve its dual public policy goals of promoting competitive neutrality, managing the public rights of way, and ensuring a level playing field for all MVPDs.<sup>6</sup>

#### D. Ontario's Draft Video Provider Ordinance

Ontario's draft video provider ordinance seeks to preserve the City's permissible authority to manage the local public rights-of-way without burdening or unnecessarily delaying new entrants, be they large or small, or

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license or franchise for video programming. The parties scheduled and convened a meeting shortly thereafter, resulting in Verizon's submitting a proposed draft agreement. Ontario has exchanged preliminary comments, and the parties have scheduled further meetings to narrow their differences. Ontario, moreover, is committed to dedicating the resources necessary to successfully complete the franchise approval process within Verizon's operational timeframes.

<sup>6</sup> Verizon serves as the incumbent phone provider in Ontario, while Time-Warner has agreed to assume Adelphia's existing operations in Ontario. Ontario, needless to say, invites feedback regarding its draft video provider ordinance from any new competitive entrant with an interest in serving our market.

traditional or non-traditional. To that end, Ontario's draft video provider ordinance incorporates a streamlined application procedure, which revolves around a 30-day application review process, culminating in the execution of Ontario's standard-form license agreement. The process need only be extended if the applicant feels compelled to renegotiate the terms and conditions of the standard-form license agreement. Moreover, provided that there are no material variances between the ordinance and the final, negotiated license agreement, the draft video provider ordinance does not anticipate City Council approval for each license/franchise to become effective—thus shortening the interval from application to final approval.

The draft video provider ordinance, as a matter of general principle, also seeks to avoid duplicative approval processes when it comes to physically accessing the City's rights-of-way, as, in the case, say, of an incumbent or competitive telecom provider that intends to rely on existing mixed-use facilities to introduce video programming services.

Finally, along with its annual fee equal to 5% of gross revenues, the draft video provider ordinance will comprehensively apply to any MVPD that delivers one or more channels of video services to residences or businesses within the City using the public rights-of-way, including, but not limited to, cable system operators, open video system operators, IP-enabled video providers, and any facilities whatsoever of MVPDs located with the public rights-of-way. Thus, in addition to its emphasis on streamlined procedures

and competitive neutrality, Ontario's draft video provider ordinance, once adopted, will ensure that existing licensees are not subjected to unfair advantages by arbitragers who claim that a new technology or outmoded regulatory classification somehow exempts them from the Ontario video provider ordinance.<sup>7</sup>

## CONCLUSION

The City of Ontario has nearly a half-century of experience as a local franchising authority, and remains uniquely poised to manage the specific needs of its local rights-of-way in a competitively neutral and non-discriminatory basis.

As part of its operational prerogatives and public interest responsibilities, the City of Ontario oversees the construction, operation, maintenance, and repair of costly surface and subsurface infrastructure known generically as the public rights-of-way. So much more than a mere legal abstraction, the public rights-of-way serve as a critical—and often crowded—corridor for public transportation and an array of increasingly complex essential systems and services that must, as a matter of public convenience and necessity, reliably deliver power, water, emergency services, telephone service, data, and, yes, video programming.

To be sure, we certainly appreciate that quality programming available at an affordable price to all the citizens of Ontario will make our community

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<sup>7</sup> It is expected that Ontario's City Council will take up the draft Video Provider Ordinance for its review and approval.



a more attractive place to live and work—which, in turn, will benefit our local economy. However, to ensure the best programming at the best prices, we also fervently believe in the power of the competitive marketplace, so we are equally committed to ensuring that competitors enjoy a level playing field and a streamlined process when it comes to fair entry. And, yes, we believe that the payment of a reasonable license or franchise fee is a fair exchange for those profit-driven companies that would rely on the public rights-of-way to house their facilities and reach their customers. So, we're not about to delay competition among MVPDs, or to step back from managing the public rights-of-way in a reasonable manner. Rather, at the City of Ontario, we have already moved toward striking an essential balance, as, even prior to the Commission's NPRM, we set upon a deliberate path for the purpose of ensuring streamlined and timely franchise procedures; vindicating local governments' unique role in the video franchising process; and promoting competitive neutrality on a level playing field. Accordingly, the Commission should be encouraged by this unfettered progress, and forego adopting another layer of regulation directed at implementing Section 621(a)(1).

Manager

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